



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, LAT, RR, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel the Notice to End Tenancy for landlords use of the property; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; to authorize the tenant to change the locks of the rental unit; to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

The tenant, an agent for the tenant and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to have the Notice to End Tenancy cancelled?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant permitted to change the locks of the rental unit?
- Is the tenant permitted to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenant testifies that she entered into a tenancy in good faith with the boyfriend of this landlord. A hand written tenancy agreement was put in place which the tenant has provided in evidence. This agreement states the name of the tenant and landlord and the address of the unit. The agreement also states that the tenancy starts on August 28, 2013 for a period of one year which may be dissolved if both parties agree. Rent of \$650.00 is also indicated on this agreement and included in the rent are heat, hot water, all utilities, cable, internet and laundry. The tenant and the landlord's boyfriend signed this agreement on August 28, 2013.

The landlord testifies that her ex-boyfriend was only staying at the property after the landlord and her ex-boyfriend had ended their relationship and he refused to leave the landlord's home. The landlord testifies that they had only lived together for one year and were not common-law partners. The landlord testifies that her ex-boyfriend had no legal interest in the property. The landlord testifies that she did not give her ex-boyfriend permission or authorisation to rent this unit to anyone or to enter into a tenancy agreement with this tenant.

The landlord testifies that she considered the agreement to be invalid as it was not authorised. The landlord agrees that the tenant did pay a security deposit and the first month's rent to the landlord's ex-boyfriend but this taken by him without authority. The landlord testifies that in October, 2013 the landlord moved back into her house after her ex-boyfriend moved out. The landlord told the tenant that the lease was not valid but she could rent the basement suite for three months as the landlord wanted to sell the property. The landlord refers to text messages between the parties which have been provided in evidence in which the landlord states a three month tenancy ending on January 31, 2014 and the tenant agrees to move out on January 31, 2014.

The landlord testifies that the house was put on the market and was sold. The new owners filled a form requesting vacant possession of the property as the buyers intend to occupy the property from January 31, 2014. The landlord then served the tenant with

a Two Month Notice to End Tenancy on November 29, 2013. This Notice had an effective date of January 31, 2014 and informed the tenant that all of the conditions of sale have been satisfied and the purchaser has asked the landlord, in writing, to give the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The landlord testifies that the tenant continued to pay rent for December and January but did not vacate the rental unit on January 31, 2014. The landlord orally requests that the Two Month Notice is upheld and requests an Order of Possession effective as soon as possible.

The tenant argues that the tenancy agreement she entered into was for a one year fixed term and she has no intention of moving out of the rental unit.

The tenant testifies that as all utilities were included in the rent and were documented on the tenancy agreement between the tenant and the landlord's boyfriend the landlord was not entitled to remove these things. The tenant testifies that the landlord prevented the tenant's access to the laundry facilities and agrees this occurred on November 13, 2013. The tenant testifies that she had to get taxis and rides from a friend to the local laundry which is approximately two miles away. The tenant seeks to recover the cost for laundry and has provided receipts for \$48.30, \$36, 80 and \$57.80 in documentary evidence. The tenant has also provided a letter from the friend who drove her to the laundry. This friend has documented in the letter that the tenant paid him \$20.00 for each of the five trips.

The tenant testifies that the landlord also removed the tenant's cable and internet service on that date and this now costs the tenant approximately \$100.00 per month to replace the cable and internet. The tenant has not provided any invoices for the cable and internet.

The tenant testifies that the advertisement for the unit stated that parking was also included. However the landlord made the tenant remove her car from the property around November 13, 2013. The tenant testifies that her friend arranged for the tenant to park her car at his mother's condo building and the tenant rents this spot from her friend's mother for \$25.00 a week. The tenant has provided no receipts for the amounts paid.

The tenant testifies that she had to have a new lock installed on her door because the landlord refused to get a restraining Order against her ex-boyfriend. This ex-boyfriend forced his way into the tenant's unit and went through the tenant's closet. The tenant was afraid of this man and so changed the locks. The tenant seeks to recover \$40.00 for the cost of the new lock and the \$20.00 paid to have it fitted.

The tenant seeks compensation equivalent to one month's rent of \$650.00 if the tenant has to vacate the rental unit on the basis of the Two Month Notice.

The tenant seeks to recover compensation for a loss of quiet enjoyment of the rental unit. The tenant testifies that the landlord did not protect the tenant's right to quiet enjoyment as the landlord did nothing to prevent her ex-boyfriend threatening the tenant when he broke into the tenant's unit. The tenant had to call the police and has a police file number for that incident. The tenant testifies that there were two other incidents involving the landlord who attacked the tenant through a door and actually tore the door off its hinges. On another occasion the tenant and the tenant's husband could hear the landlord arguing violently upstairs. The tenant's husband went up to help and was chased off by the landlord with a pair of scissors. The police were again called and the landlord was arrested and charged. The tenant testifies that if the landlord had sought a restraining order against her ex-boyfriend this would have given the tenant peace of mind and a quiet environment. The tenant testifies that she had to get a restraining Order herself against the landlord's ex-boyfriend. The tenant seeks compensation of \$2,000.00 for this loss of quiet enjoyment.

The landlord testifies that the original advertisement for the unit did include laundry, cable and internet services and parking. This also included a furnished unit all for \$650.00 a month. The landlord testifies that the advertisement was changed a few days later indicating the rent was \$750.00 for an unfurnished unit. The landlord testifies that on November 13, 2013 she wrote to the tenant to inform the tenant that as the tenant was doing so much laundry the landlord was having a hard time paying the bills. The landlord testifies that this unit was for single occupancy only however the tenant has allowed her husband to live in the unit with her.

The landlord agrees that when she moved back into the house the cable and internet were in her ex-boyfriend name so these were cut off at that time he moved out. The landlord testifies that she had asked the tenant if the tenant was willing to put cable in her own name from October 20, 2013. The landlord testifies that the advertisement was for basic cable only yet the tenant had billed \$50.00 in movies which the tenant did reimburse the landlord for later.

The landlord testifies that the tenant was asked to remove her car as it was not running and was not insured. The parking space was for an insured vehicle and not storage space for the tenant's car. The landlord testifies that she needed this space to put a storage pod in to start to pack up the house when it was sold.

The landlord testifies that she could not get a restraining Order against her ex-boyfriend as they were going through a civil suit at the time in the courts and because her ex-boyfriend had not actually touched the landlord. The landlord agrees there was an altercation between the landlord and her ex-boyfriend. That the time the landlord explains that she was changing a lock and had a pair of scissors in her hand. Her ex-boyfriend came and started to argue with the landlord. The tenant's husband was on the stairs and heard the landlord say that she wishes she could use the scissors on her ex-boyfriend. The tenant's husband said he heard that and was going to call the police. At that time the landlord testifies that she did not know who the tenant's husband was so she chased him out of her house. The landlord agrees she was arrested and charged

with assault with a weapon and mischief. The landlord testifies that these charges have now been stayed for a year.

The landlord testifies that she went to see the tenant about removing some of the belongings from the tenants unit. The tenant shut the door in the landlords face and the landlord did but her foot in the door and grabbed the tenants arm. The landlord agrees that the tenant's door was also torn off its hinges.

The tenant's agent asks the landlord why the landlord not gave the tenant a Notice to End Tenancy on the first day the landlord found the tenant there. The landlord responds and testifies that she did tell the tenant that she could not live there and that her ex-boyfriend had no right to rent the unit to the tenant. The tenant would not listen and walked away from the landlord. The tenant said that the landlord's boyfriend was her landlord.

The tenant testifies that she would deal with the landlord as she did not know who she was. The tenant testifies that her agreement was signed with the landlord's boyfriend and as he was her common-law partner he had a right to rent the unit as he would have had an interest in the property. The tenant testifies that she told the landlord that she had to sort it all out with her boyfriend. When the landlord came back she started to scream at the tenant and called her names.

The landlord testifies that when she first went to the house to take photographs she found the tenant there and was flabbergasted. The landlord testifies that she told her ex-boyfriend that he had no right to rent the unit. They were not common-law partners and had only lived together for a year. The landlord testifies she had issued the tenant with a One Month Notice to End Tenancy in September which was served in October. However the landlord missed the hearing and the Notice was set aside.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. When a tenancy agreement has been entered into between two parties it must be a legally binding agreement between either the legal owner/ landlord of the property or a person who the landlord has given permission to act as their agent or to rent the unit. I am not satisfied from the evidence before me that the landlord's ex-boyfriend had the authority to rent this unit to the tenant or to enter into a legally binding agreement with the tenant. While I appreciate that the tenant entered into this agreement in good faith; the agreement cannot be upheld if the other party did not have the authority to make this agreement. Consequently, I must deem that the agreement for one year has no force or effect.

However the landlord did allow the tenant to continue to reside in the unit for three months and accepted rent from the tenant; therefore entering into a verbal agreement to rent the unit for this period. I am satisfied from the text messages between the parties that the tenant was aware of this and that the tenant did agree to vacate the unit on January 31, 2014. To this effect the landlord served the tenant with a Two Month Notice to End Tenancy on November 29, 2013 in person. The landlord has met the burden of proof concerning the reason given on the Notice and I find that the property has been sold, all conditions of sale have been lifted and the new owners seek vacant possession for their own use.

The tenant's application to cancel the Two Month Notice is therefore dismissed. As the landlord has requested an Order of Possession at this hearing I refer the parties to s. 55(1) of the *Residential Tenancy Act (Act)*:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

- (a) the landlord makes an oral request for an order of possession, and*
- (b) the director dismisses the tenant's application or upholds the landlord's notice.*

I therefore grant an Order of Possession to the landlord. As the effective date of the Two Month Notice was January 31, 2014 and that date has since passed, I find the Order of Possession will have an effective date of two days after service upon the tenant.

With regard to the tenants claim for compensation for loss of services and facilities; the tenant has testified that the advertisement stated that laundry, cable, internet and parking were all included in the rent. Neither party has provided a copy of the advertisement. The landlord does not dispute that these things were originally in the advert. As I have deemed the hand written tenancy agreement to be invalid then the contents of that agreement are also invalid. However, if these items were included on the advertisement I find the tenant would be entitled to have negotiated these services with the landlord when they entered into a verbal agreement in October.

As the parties did not agree on what facilities were included in the rent it is difficult for a third party to interpret any other agreement. However, I am satisfied that the landlord did intend to rent this unit with laundry, cable internet and parking. I therefore refer the parties to s.27 of the Act which states:

27 (1) *A landlord must not terminate or restrict a service or facility if*

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or*
- (b) providing the service or facility is a material term of the tenancy agreement.*

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

While I would not consider any of these facilities or services to be essential I do find the landlord should have given the tenant 30 days notice that they were being removed and reduced the rent to an amount that was equivalent to the reduction in value of the tenancy. With this in mind I find the tenants rent for October may be reduced by **\$50.00** per month and for November, December and January the rent may be reduced by **\$100.00** per month. This makes the tenants rent \$600.00 for October and \$550.00 for November, December and January.

With regard to the tenants claim for compensation equivalent to one month's rent based on the Two Month Notice. I refer the parties to s. 51(1) of the Act which states:

51 *(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

As the Two Month Notice has been upheld, I find the tenant is entitled to recover rent for January, 2014 of **\$650.00**. The tenant did not move from the rental unit on January 31, 2014. Therefore the tenant is required to pay an amount for overholding at the rental unit. This amount should be calculated between the parties on a daily basis for each day the tenant remains in the rental unit.

With regard to the tenants claim for compensation for laundry fees and rides to and from the laundry, the reduction allowed in the rent is to compensate the tenant for these additional costs she may have incurred for doing laundry and for her cable and internet service. No further Monetary Orders will be provided for any other costs incurred. With regard to the tenants claim for a loss of parking; the tenant has claimed \$25.00 per week; however, has provided insufficient evidence to support her claim that this loss has occurred. The tenant agrees that her car was not insured at the time so could not have been used by the tenant. I must therefore consider how this loss of parking devalued the tenancy and it is my decision that the loss of parking did not devalue the tenancy and therefore no compensation or rent reduction has been awarded to the tenant.

With regard to the tenants claim for a loss of quiet enjoyment; I have reviewed the evidence before me in this matter and find the tenant did have to take a restraining order out against the landlord's ex-boyfriend. As this person had also not physically harmed the tenant I find the landlords argument that she could not get a restraining order herself as her ex-boyfriend had not physically harmed the landlord to carry very little weight. I refer the parties to s. 28 of the Act which states:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Consequently it is my decision that the landlord did not protect the tenant from unreasonable disturbances from both the landlord and the landlord's ex-boyfriend. The landlord did not protect the tenant's right to privacy when the landlord's ex-boyfriend was able to enter the tenant's unit and go through the tenant's closet or when the landlord attempted to gain entry to the unit and ripped the tenant's door off. Furthermore the landlord was charged with an *Act* involving a weapon of sorts and mischief. Consequently I am satisfied that the tenant's rights to quiet enjoyment were not upheld at that time. The tenant should not have been embroiled in a dispute between the landlord and the landlord's ex-boyfriend. The tenant has requested compensation of \$2,000.00. However as these incidents were not prolonged and have not continued I find this amount to be extreme. I do however award the tenant an amount of **\$750.00** in compensation.

With regards to the tenants claim to authorise the tenant to change the locks; I refer the parties to s. 31(2) and (3) of the *Act* which states:

(2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered the change.

While I understand why the tenant felt she had to change the locks, the tenant is not permitted to do so as explained under s. 31 of the *Act* without either the landlords consent or an Order. As the situation is now calmer and the tenancy will end I find the

tenant must either return the original locks to the unit if the landlord requests the tenant to or provide keys to the new locks. No Orders on this matter will be issued and the tenant's application on this matter is dismissed.

As the tenant has been partially successful with this application I find the tenant is entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,800.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced through the Provincial Court as an order of that Court.

The tenant's application to cancel the Two Month Notice to End Tenancy is dismissed. The Two Month Notice to End Tenancy will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 04, 2014

Residential Tenancy Branch

